

### REMARKS

This Application has been carefully reviewed in light of the Office Action mailed on September 16, 2008 ("Office Action"). Claims 1-12 and 16-20 have been previously withdrawn. Claims 13-15 and 21-31 have been rejected. Claims 13, 28, and 31 have been amended herein. Applicants respectfully request reconsideration and favorable action in this case.

#### **Claim Rejections – 35 USC 101**

Claims 1 and 28 have been rejected under 35 U.S.C. § 101 as allegedly lacking connection to a particular statutory class. Applicants have amended each of the pending independent claims to address this rejection, and respectfully request withdrawal of the rejection. Support for the amendments can be found in the original specification at least in paragraphs [0033]-[0035] and [0061]-[0066]. Applicants note that the amendments refer to a "computer system," but such reference is not intended to limit performance of the method to a single computer or group of computers at a single geographic location, but only to provide recitation of particular machines on which the process is to occur.

#### **Claim Rejections – 35 USC 112**

Certain claims stand rejected under 35 U.S.C. § 112, ¶ 1, as allegedly failing to comply with the written description requirement, with respect to the claim terms "term set" and "price set." The test under the written description requirement is "whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed." M.P.E.P. § 2163(I)(B). Applicant submits that under the proper test of § 112, each pending claim has written description support in the Application as filed. Specifically, at paragraph [0028] of the originally-filed specification, the application refers to "one price or a *set of prices*". Applicant also submits that a price is a well-known contract term, so that the application adequately discloses both price sets and term sets. Thus, based on the foregoing disclosure at least, one of ordinary skill in the art would have recognized that Applicant was in possession of the subject matter of the claims as of the filing

date of the Application. Also, Applicant has amended claims 13 and 28 to change “term set” and “price set” to “set of terms” and “set of prices,” respectively, so as to match the exact language of the specification even more closely. Applicants therefore respectfully request that the rejections of claims 39 and 52 under § 112 be withdrawn.

### **Claim Rejections – 35 USC 103**

Claims 13-15, 21, and 23-31 were rejected under 35 U.S.C. § 103 as allegedly obvious over U.S. Publication 2006/0149653 to Davis in view of U.S. Pub 2003/0191672 to Kendall. Applicants submit, however, that Davis does not disclose or suggest receiving bids having complex pricing structures from potential bidders, “wherein the complex pricing structure is selected by the potential bidders from among a group of multiple pricing structures made available to the potential bidders,” as recited in claim 1. As indicated in the application as-filed, a pricing structure provides a definition of the pricing without the prices being filled in, such as providing one price for items shipped to one area, and another price to items shipped to another area. And at paragraph [0050] of the application, a buyer is said to select multiple alternative pricing structures to be made available to bidders, and that “bidders may then be given the flexibility to choose a pricing structure that relates well to their business and pricing structures,” and may then fill bid prices into the selected structure. By allowing the bidders to choose from multiple pricing structures, a buyer can first identify multiple approaches that it is willing to follow – thus giving the bidders notice of the available approaches – but also providing bidders with flexibility, in that the bidders can select from among multiple pricing structures.

Applicants respectfully submit that the applied references neither disclose nor fairly suggest such a feature, or otherwise provide such flexibility for buyers and bidders. Davis appears to say very little about the content of the bid invitation, *see* Davis at [0145], and appears to contemplate only a single pricing structure whether in the preparation of a bid invitation or a response, *see* Davis at [0145]-[0147]. As a result, the flexibility provided by the pending claimed invention – for giving bidders multiple pricing structures from which to select so as to

give a buyer some level of control (e.g., by dictating the structures) while still providing bidders with flexibility (by letting a bidder select one of the structures) – is absent from Davis.

Kendall also does not disclose or suggest this feature. It discusses a system for appraising life insurance and annuities with one price (and thus only one pricing structure) for each product. *See* Kendall at [0083]. Applicants thus request allowance of claim 13.

Claim 28 similarly recites feature of having a plurality of bid proposals for an item from a bidder, “characterized by a set of prices and a set of terms supplied by the buyer and corresponding to the set of prices.” Again, in the applied references, each bidder submits only a single proposal per item, with a single pricing structure and a single price (Kendall, and some instances in Davis) or set of prices (other instances in Davis) for that structure. As a result, and for the reasons just discussed, Applicant requests allowance of claim 28.

The dependent claims are patentable for the reasons just discussed and for additional reasons. For example, Claim 23 recites providing one bidder’s bid terms, but not its bid prices, to other bidders, and seeking prices from those other bidders for the bid terms. (Claim 30 recites a similar feature.) In this manner, the buyer can “borrow” from a bidder certain terms that seem interesting, and determine how other bidders will price those terms, without letting those other bidders know what the first bidder has quoted. The Office Action refers to paragraph [0156] in Davis for such disclosure, but Davis merely mentions that a buyer can allow a supplier “to view certain aspects of any other proposal.” It does not identify which aspects, and it plainly does not disclose or suggest the innovative aspect of showing bid terms, but not bid prices, of one bidder to other bidders.

Claim 24 recites that the different terms and bid prices correspond to geographic location-specific information. The Office Action gives little or no weight to this feature under the assumption that the feature does not appear to “solve[] any stated problem or is for any particular purpose.” However, such information can be particularly useful as a term in an agreement because, for example, certain bidders may be able to provide goods to certain locations much less expensively than to other locations. For example, a supplier having facilities

in cities A, B, C, and D could personally deliver goods in those cities, and thus provide goods in those cities at substantially lower cost than in cities where the supplier would have to hire a third party company to assist with delivery. Using the invention of claim 24, then, a customer with facilities in cities A, B, C, and/or D could realize a substantial savings by providing a process by which the supplier can take advantage of its geographic location. It is this ability to match possible needs of a buyer with special offerings of a seller, related here to the peculiar geography of the seller, that underscores the benefits of the invention. Other contract terms do not have potential for such supplier-specific geographic features.

Claim 27 recites the feature of normalizing prices of aggregated bids to permit comparison among differing bids. Davis, however, simply shows the raw bid amounts, from what Applicants can determine – i.e., no normalization or other sort of adjustment has been made to the bids in Davis. As a result, an observer is left to make an apples-to-oranges comparison of the raw bids, a much more difficult process than comparing normalized bids in an apples-to-apples manner.

For at least these reasons, Applicants respectfully request allowance of the claims that depend on claims 13 and 28.

### **Conclusion**

Applicants submit that claims 13-15 and 21-31 are in condition for allowance, and requests that the Examiner issue a notice of allowance.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this

Applicant : Stefan Kiefer, et al.  
Serial No. : 10/695,621  
Filed : October 28, 2003  
Page : 12 of 12

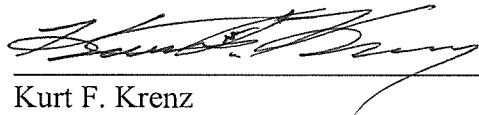
Attorney's Docket No.: 13914-0016001/2003P00626 US

paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

This submission is accompanied by a Petition for Extension of Time and the required fee. Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 20 Feb. 2009

  
Kurt F. Krenz  
Reg. No. 62,664

Fish & Richardson P.C.  
60 South Sixth Street  
Suite 3300  
Minneapolis, MN 55402  
Telephone: (612) 335-5070  
Facsimile: (877) 769-7945